Appendix

Art. 1, Section 8, Clause 3 of the Constitution of the United States:

> To regulate Commerce with foreign Nation, among the several States, and with the Indian Tribes.

Sec. 601(c)(4) Title IV of the Revenue Act of 1932. (This provision was originally enacted June 6, 1932, c. 209, Sec. 601(c)(4), 47 Stat. 260. It was reenacted without change in 53 Stat. 414, 26 U.S.C.A., Sec. 3422. The text of the provision is printed at page 4 of the present petition.)

Sec. 630 of the Revenue Act of 1932. (This section was added to the Revenue Act of 1932 on June 16, 1933, 48 Stat. 256. It was amended by the inclusion of certain additional matter on May 28, 1938, c. 289, Sec. 705, 52 Stat. 570, 26 U.S.C.A., Sec. 3451. The text of the provision in effect when the fuel oil was supplied to the Steamship "Leviathan" (January 21 and 22, 1938) is printed at page 4 of the present petition.)

Section 195 of the Judicial Code as amended, 28 U.S.C., Section 308:

> (Judicial Code, section 195, amended.) Review of Decisions of United States Customs Court. The Court of Customs and Patent Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by the United States Customs Court in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said court, and all ap-

pealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs and Patent Appeals shall be final in all such cases: PROVIDED, HOWEVER, That in any case in which the judgment or decree of the Court of Customs and Patent Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the application of either party, duly made as required by section 350 of this title, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court: AND PROVIDED FURTHER, That the first proviso of this section shall not apply to any case involving only the construction of section 1, or any portion thereof, of an Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909 (Thirty-sixth Statutes, page 11), nor to any case involving the construction of section 2 of an Act entitled "An Act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July 26, 1911 (Thirty-seventh Statutes, page 11). (Aug. 5, 1909, c. 6, §29, 36 Stat. 106; Mar. 3, 1911, c. 231, §195, 36 Stat. 1145; Aug. 22, 1914, c. 267, 38 Stat. 703; Sept. 6, 1916, c. 448, §6, 39 Stat. 727; Feb. 13, 1925, c. 229, §8, 43 Stat. 940; May 28, 1926, c. 411, §1, 44 Stat. 669; Jan. 31, 1928, c. 14, §1, 45 Stat. 1475; Mar. 2, 1929, c. 488, §1, 45 Stat. 1475; June 17, 1930, c. 497, Title IV, §647, 46 Stat. 762.)

It should be noted that Section 601(b) of the Revenue Act of 1932 declares that the tax imposed by Section 601(c)(4) "shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of

1930 and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act * * *". (See *McGoldrick* v. *Gulf Oil Corp., supra,* pp. 423, 424.)

Section 557 of the Tariff Act of 1930, 19 U.S.C.A., Section 1557:

> Sec. 1557. ENTRY FOR WAREHOUSE; WAREHOUSE PERIOD; DRAWBACK
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> Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at any time within three years (or ten months in the case of grain) from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port: PROVIDED, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed three years (or ten months in the case of grain) from the date of importation. Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within three years (or ten months in the case of grain) after the date of importation for exportation or for transportation and exportation to a foreign country,

or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, 99 per centum of the duties thereon shall be refunded.

Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded. (June 17, 1930, c. 497, Title IV, §557, 46 Stat. 744.)

77 Cong. Rec., Part III, pp. 1312-1314:

"Mr. Harrison: * * * There is also a provision that deals with fuel oils and ships' stores and sea stores. It was found that many of the vessels which carry on the foreign trade heretofore had bought their fuel oil in this country, but since the passage of the tax act they have changed their practice and are filling their tanks abroad in the ports of foreign countries, and we are losing that trade. A provision is recommended by the committee that in the case of fuel oil, ships' stores, and so forth, as involved in this class of foreign trade, the tax shall not be imposed. It will be seen from a reading of the bill that it does not apply to coastwise vessels at all, but only to those engaged in foreign trade."

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"Mr. White: Mr. President, will the Senator recur to section 630? That section relates to a tax imposed upon fuel supplies, ships' stores, sea

stores, and so forth, and provides that this tax shall not be collected on such stores used on war vessels either of the United States or of a foreign country. That is right; is it not?

"Mr. Harrison: Yes.

"Mr. White: Then it goes on and refers to these stores and supplies used upon vessels employed in the fisheries or in the whaling business, and so forth. I take it this exempts from the tax only those stores used on American ships.

"Mr. Harrison: The Senator from Pennsylvania (Mr. Reed) offered this amendment, and I should like to hear his interpretation of that.

"Mr. Reed: Mr. President, the idea is this:

At the present time, ships under the American flag or foreign flags, engaged in the various services mentioned here, all have opportunity to buy their fuel oil at foreign ports, and since we have put a tax on that oil they have all been doing it. At the present time we are not getting any revenue out of vessels engaged in these services. We will not get any revenue out of them if this section passes; but Americans will get the business of selling to them, which at present is prevented by the imposition of the tax.

"Mr. White: To repeat my question, are foreign vessels employed in the fisheries or in the whaling business exempted from the tax on the use of these articles?

"Mr. Reed: I think they would be, and they ought to be, because at present they are buying their supplies abroad; and not only do we get no tax, but American suppliers do not get any of the business.

"Mr. White: Of course there are no foreign vessels engaged in trade between the Atlantic and Pacific ports of the United States.

"Mr. Reed: That is true.

"Mr. White: The inclusion of that clause led me to believe that perhaps this second portion applied only to American ships.

"Mr. Reed: No; I should not so construe it. The reason for putting in ships plying between the Atlantic and Pacific ports of the United States is that those ships touch, or can touch at foreign ports, and can there pick up foreign oil tax-free.

"Mr. White: May I ask the Senator the origin of this suggestion?

"Mr. Reed: The origin was with some of the oil companies. Having received the suggestion from these companies, and feeling unable myself to detect any 'joker' that might be in it, I submitted it first to the experts of the Joint Committee on Internal Revenue Taxation, and next to the Treasury Department, and was told by both of those authorities that the amendment seemed to them to be a proper one, and they saw no defect in it.

"Mr. White: Was it submitted to anyone having a special interest in the shipping of the United States? Was it submitted to the Shipping Board?

"Mr. Reed: No; I do not think it was, so far as I know; but I should think they would be very anxious to have it adopted. At the present time the trans-Atlantic liners which used to buy all their fuel oil in New York and other American ports are buying European oil in European ports, enough to carry them on the round trip. We are not only getting no tax out of those vessels but we are getting no business out of them.

"Mr. White: That relates to vessels in the North Atlantic trade.

"Mr. Reed: That is right.

"Mr. White: But what about other vessels?

"Mr. Reed: I am told by one of the Senators from California that this will be very helpful to them in enabling them to sell to the trans-Pacific trade.

"Mr. White: Of course, it is an entirely new suggestion so far as I am concerned, and I do not know that I have any very definite notions about it. I am just suspicious about it; that is all.

"Mr. Reed: What suspicion has the Senator?

"Mr. White: I am not sure that I like to see foreign ships and American ships put on precisely the same plan respecting this matter.

"Mr. Reed: Well, at the present time neither of them is buying any American oil. We want to get that business.

"Mr. White: Is that an entirely accurate statement?

"Mr. Reed: No; I think that is probably too sweeping. I should say that the vast bulk of the business has been lost. There may be exceptions.

"Mr. Fletcher: Mr. President, may I ask the Senator whether this provision imposes any additional tax on American shipping?

"Mr. Reed: No, Mr. President; it does not.

"Mr. Fletcher: I do not see how they could object, if it does not impose any additional tax on them.

"Mr. Reed: I do not see where they could have any objection.

"Mr. Connally: Mr President, I desire to ask the Senator from Pennsylvania a question. Why should vessels engaged in whaling and the fisheries be exempt? They do not necessarily touch at foreign ports; do they?

"Mr. Reed: Because they can very easily do so.

"Mr. Connally: Where?

"Mr. Reed: Take a ship that goes whaling to the south Pacific Ocean: It can pick up its oil in a hundred places.

"Mr. Connally: I can see no reason for exempting all the fishing industry and the whaling vessels when we make our coastwise vessels engaged in commercial pursuits pay this tax. I see

no reason why a vessel doing business between the Atlantic and the Pacific, going through the Panama Canal, all of which is our territory, should be exempt from this tax.

"Mr. Reed: Oh, no; on the contrary, the whole Caribbean Sea is not our territory by any means.

"Mr. Connally: The Panama Canal is under our control.

"Mr. Reed: The Panama Canal is; but those vessels are in a position to pick up foreign oil, and we want to get the business for American producers.

"Mr. Connally: I am not quarreling with the part with reference to foreign commerce; but I do not see any reason why we should exempt the fishing people and the whaling people from the payment of the tax.

"Mr. Reed: The whalers, I think, clearly ought to be exempted, because all of them go into foreign waters. The fishing ships may or may not.

"Mr. Connally: Where would they buy oil if they were going into the South Polar or Antarctic region? There are no oil stations there.

"Mr. Reed: They pass a hundred ports at which tankers from Persia could fill them up, and in which tankers are situated that would be glad to have the business".

We also quote the following from the report of Senator Harrison, Chairman of the Finance Committee on the amendment (Report No. 58, 73 Congress 1 Session—May 1, 1933—To accompany H.R. 5040):

"Your committee has inserted a new section 5 providing for exemption from the manufacturers' excise taxes under the Revenue Act of 1932 of articles sold for use as supplies or equipment on vessels of war, vessels employed in the fisheries of whaling business, or actually engaged in foreign

trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. It is believed that this amendment will enable American manufacturers to compete more favorably with their foreign competitors for this business without any substantial loss of revenue since the effect of the present law is to force purchases abroad. The bill also provides for allowance of drawback on articles manufactured or produced with the use of merchandise on the importation of which tax has been paid under the Revenue Act of 1932, when such articles are laden for use as supplies on vessels of the classes enumerated. This also relieves American manufacturers from a competitive disadvantage."